

## HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SUSAN RANTS

**Plaintiff,**

V.

WHPACIFIC INC., a for-profit Alaska Corporation operating in facilities in Washington,

Defendant.

Case No. C10-05273 RBL

**ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND COMPLAINT**

This matter is before the Court on the Plaintiff's Motion to file an Amended Complaint. [Dkt.

#11]. Plaintiff seeks to add as Defendants NANA Development Corporation (NDC) and NANA Regional Corporation (NRC). Plaintiff's claims are based on alleged disability discrimination. Plaintiff asserts that she was employed jointly by WHPacific, NDC, and NRC. NRC is a Regional Alaska Native corporation formed in 1971. NRC wholly owns NDC, an investment management company. NDC wholly owns WHPacific, an engineering firm where plaintiff was employed.

Plaintiff filed her complaint against WHPacific in Thurston County Superior Court on March 23, 2010. WHPacific removed the case to this Court on April 21, 2010. On July 26, 2010, this Court entered an order setting pre-trial dates. In that order, the Court set August 25, 2010, as the deadline for filing any motion to join parties.

Although the deadline has passed, Plaintiff moves for leave to file an amended complaint under Fed. R. Civ. P. 15, and/or for permissive joinder under Fed. R. Civ. P. 20(a). Plaintiff argues that

1 WHPacific, NDC, and NRC are joint parties in interest. She also alleges that these corporations jointly  
 2 imposed personnel policies that discriminated against her because of her disability. Plaintiff therefore  
 3 contends that granting her motion will prevent the potential for multiple lawsuits, and that there appears to  
 4 be no prejudice, expense, or delay that would injure the Defendants. Because the deadline for filing a  
 5 motion to join parties has passed, Defendants argue that establishing good cause is a prerequisite to  
 6 granting this Motion and that Plaintiff cannot do so. Defendants argue that even if Plaintiff could, her  
 7 amended complaint would be futile because neither NDC nor NRC was her employer.

8 Fed. R. Civ. P 15(a) permits a party to amend its pleading as a matter of course within 21 days  
 9 after serving it, or 21 days after a responsive pleading is filed. After that, the rule directs courts to give  
 10 leave when justice requires. Rule 15(a) is liberally construed and courts will grant leave to amend unless  
 11 doing so would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue  
 12 delay. *See Ascon Properties, Inc. v. Mobil Oil Co.*, 886 F.2d 1149, 1160 (9<sup>th</sup> Cir. 1989). The liberal  
 13 standards of Rule 15(a) are limited by Fed. R. Civ. P. 16, which requires the district judge to enter a  
 14 scheduling order that limits the time to join other parties and to amend the pleadings. Once the scheduling  
 15 order is entered, it controls the proceedings unless modified by the court. Fed. R. Civ. P. 16(e).

16 A pretrial scheduling order may be modified only for good cause and with the judge's consent.<sup>1</sup>  
 17 Fed. R. Civ. P. 16(b)(4); *Forstmann v. Culp*, 114 F.R.D. 83, 85 (M.D. NC. 1987)(Party seeking to amend  
 18 pleading after date specified in scheduling order must first show "good cause" for amendment under Rule  
 19 16(b)). "Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking the  
 20 amendment." *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9<sup>th</sup> Cir. 1992). If the moving party  
 21 was not diligent, then the inquiry should end. *Id.*

22 Before August 25<sup>th</sup>, Plaintiff had the necessary information to add NDC and NRC as defendants.  
 23 By May 12, 2010, Plaintiff knew that NDC owned WHPacific, and that NRC owned NDC. [Dkt. 11].  
 24 Also, plaintiff knew that NRC approved hiring decisions made by WHPacific. *Id.* Nonetheless, Plaintiff  
 25 did not file an amended complaint by August 25<sup>th</sup>. Instead, she filed this motion for leave to amend on

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26  
 27 <sup>1</sup>Plaintiff does not specifically request modification of the pretrial scheduling order. Instead, she  
 28 moves for leave to amend her complaint and add defendants. Nonetheless, Rule 16 applies because granting  
 Plaintiff's motion would effectively modify the scheduling order. *See Johnson*, 975 F.2d at 608-609 (Motion  
 to amend complaint made after scheduling order due date was the same as a motion to amend the scheduling  
 order).

1 September 3, 2010, less than two weeks later. Although it was possible for Plaintiff to file an amended  
 2 complaint earlier, these circumstances do not show a lack of diligence. *See Aldan v. World Corp.*, 267  
 3 F.R.D. 346, 358 (N. Mar. I. 2010)(A delay from mid December 2009 to early February 2010 before filing  
 4 a motion to amend did not demonstrate a lack of diligence, even though the party sought leave to amend  
 5 after the cut-off date set in the pretrial scheduling order). Therefore, Rule 16(b) does not preclude the  
 6 Court from modifying the scheduling order. Furthermore, finding good cause in this case does not  
 7 conflict with the purpose of Rule 16(b), which “was added to the Federal Rules of Civil Procedure in  
 8 order to facilitate judicial control over a case and to set a schedule for pretrial steps.” *C.F. v. Capistrano*  
 9 *Unified School Dist.*, 656 F.Supp.2d 1190, 1197 (C.D. CA. 2009). In *Capistrano*, the court allowed a  
 10 party to amend its pleadings after the pretrial schedule deadline because doing so created no meaningful  
 11 issues of case management and did not impair the efficient adjudication of the action. *Id.* Here, there will  
 12 be no issue of case management. Allowing Plaintiff to amend her complaint may actually assist the  
 13 efficient adjudication of this action because adding NDC and NRC will prevent the potential for multiple  
 14 lawsuits. For these reasons, Plaintiff has established good cause under Rule 16(b). The remaining issue is  
 15 whether allowing Plaintiff to amend her complaint is appropriate under Rule 15(a).

16 As previously noted, Rule 15(a) is liberally construed and courts will grant leave to amend unless  
 17 doing so would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue  
 18 delay. *Ascon Properties*, 886 F.2d at 1160. Defendants argue that Plaintiff’s claims against NDC and  
 19 NRC are futile because neither entity was her direct employer. “[A] proposed amendment is futile only if  
 20 no set of facts can be proved under the amendment to the pleadings that would constitute a valid and  
 21 sufficient claim or defense.” *Sweany v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9<sup>th</sup> Cir.1997)  
 22 (*quoting Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9<sup>th</sup> Cir. 1988)). Plaintiff argues that she has a  
 23 valid claim against NDC and NRC because they participated in WHPacific’s employment practices.

24 Two or more businesses may be joint employers covered by FMLA.<sup>2</sup> *See* 29 CFR 825.106. A  
 25 joint employment status may exist where “the employers are not completely disassociated with respect to  
 26 the employee’s employment and may be deemed to share control of the employee, directly or indirectly,

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28 <sup>2</sup>Plaintiff also brings claims under Washington’s Law Against Discrimination (RCW 49.60), and the Rehabilitation Act of 1973 (29 U.S.C. § 794). The Court does not decide here whether the “joint employer” rule applies to those claims.

1 because one employer controls ... the other employer." *Id.*; *Moreau v. Air France*, 356 F.3d 942, 946 (9<sup>th</sup>  
2 Cir. 2004). Plaintiff alleges that WHPacific's general staffing issues are processed through NDC and  
3 NRC. She also alleges that she participated in a work program organized by NRC during her medical  
4 leave. Defendant concedes that NRC owns NDC, which owns WHPacific. These alleged facts could  
5 establish a claim based on joint employer status. Therefore, allowing Plaintiff to amend her complaint is  
6 not futile. Furthermore, there is no evidence of bad faith, prejudice, or undue delay.  
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8 Plaintiff's Motion to Amend Complaint [Dkt. #11] is GRANTED.  
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10 **IT IS SO ORDERED.**  
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12 DATED this 3<sup>rd</sup> day of November, 2010.  
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RONALD B. LEIGHTON  
15 UNITED STATES DISTRICT JUDGE  
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